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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4108

11 **NICOLE MARIE PRATT**
12 **14713 Fisk Court**
13 **San Leandro, CA 94579**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 80222**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about December 20, 2007, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 80222 to Nicole Marie Pratt (Respondent). The Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on July 31, 2013, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code (Code) unless otherwise indicated.

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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and will require a new application.

14 STATUTORY AND REGULATORY PROVISIONS

15 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
16 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
17 not be limited to, any of the following:

18 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
19 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
20 whether the act is a felony or misdemeanor or not.

21 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
22 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
23 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
24 to the extent that the use impairs the ability of the person to conduct with safety to the public the
25 practice authorized by the license.

26 (j) The violation of any of the statutes of this state, of any other state, or of the United
27 States regulating controlled substances and dangerous drugs.

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1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by
4 the board or by any other state or federal regulatory agency.

5 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
6 drug or dangerous device except upon the prescription of an authorized prescriber.

7 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
8 controlled substance, except that furnished upon a valid prescription/drug order.

9 10. Health and Safety Code section 11170 provides that no person shall prescribe,
10 administer, or furnish a controlled substance for himself or herself.

11 11. Health and Safety Code section 11173, subdivision (a), provides that no person shall
12 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
13 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
14 or subterfuge; or (2) by the concealment of a material fact.

15 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
16 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
17 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

18 COST RECOVERY

19 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation of the licensing
21 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

22 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

23 14. Section 4021 of the Code states:

24 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
25 11053) of Division 10 of the Health and Safety Code.”

26 15. Section 4022 of the Code states, in pertinent part:

27 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
28 except veterinary drugs that are labeled as such, and includes the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without prescription,’ ‘Rx only,’ or words of similar import.

...

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

16. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **Hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

FACTUAL BACKGROUND

17. From an unknown start date until on or about January 3, 2011, Respondent was employed by Kaiser Permanente as a pharmacy technician at a Kaiser Foundation Hospital Inpatient Pharmacy (HSP 41396) in Fremont, CA, where by virtue of her licensure she had access to controlled substances and dangerous drugs.

18. During her Kaiser employment, Respondent used this access to divert/steal, and self-administer, controlled substances/dangerous drugs, including **Vicodin** or its generic equivalent, **Hydrocodone with APAP 5/500**.

19. The exact number of instances of diversion/theft by Respondent, and the full quantity of controlled substances or dangerous drugs diverted/stolen, and/or self-used are not known, but investigations by Kaiser and by Board Inspector(s) revealed/reported the following:

a. Between in or about September and in or about November 2010, management at the pharmacy began noticing missing bottles of thirty (30) count **Vicodin (or Hydrocodone with APAP 5/500)**. On or about December 8, 2010, the pharmacy filed a Report of Theft or Loss of Controlled Substances (DEA-106) identifying a shortage attributed to employee pilferage of five (5) bottles, thirty (30) tablets each, of **Vicodin (or Hydrocodone with APAP 5/500)**. The pharmacy management staff noted that Respondent was working during all shifts when shortages were noted. A surveillance camera was installed on or about December 9, 2010.

b. Between on or about December 16, 2010 and on or about December 17, 2010, a perpetual inventory count discovered an additional bottle (30 tablets) of **Vicodin** missing.

c. On or about December 17, 2010, Respondent was captured on video accessing the Narcotics Room, which she had no reason to enter, and diverting a bottle of **Vicodin**.

d. On or about December 20, 2010, during an interview with Kaiser management and investigators, Respondent initially denied any diversion of controlled substances or access to the Narcotics Room. After being shown the video of her doing so, Respondent admitted to taking a bottle of **Vicodin** on or about December 17, 2010, and further admitted to taking other bottles of **Vicodin** on four (4) or five (5) prior occasions, beginning in September 2010. Respondent further admitted to taking the **Vicodin** for self-use. She denied suffering from an addiction.

e. On or about January 3, 2011, Respondent resigned in lieu of termination.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

20. Respondent is subject to discipline under section 4301(f) of the Code, in that Respondent, as described in paragraphs 17 to 19 above, committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance(s))

21. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j) and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as described in paragraphs 17 to 19 above, administered a controlled substance to herself.

THIRD CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance(s))

22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 17 to 19 above, furnished to herself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance(s))

3 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
5 in paragraphs 17 to 19 above, possessed, conspired to possess, and/or assisted in or abetted
6 possession of, a controlled substance, without a prescription.

7 FIFTH CAUSE FOR DISCIPLINE

8 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

9 24. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
10 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
11 17 to 19 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
12 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

13 SIXTH CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct)

15 25. Respondent is subject to discipline under section 4301 of the Code in that
16 Respondent, as described in paragraphs 17 to 24 above, engaged in unprofessional conduct.
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22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Pharmacy issue a decision:

25 1. Revoking or suspending Pharmacy Technician License Number TCH 80222, issued
26 to Nicole Marie Pratt (Respondent);

27 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
28 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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3. Taking such other and further action as is deemed necessary and proper.

DATED:

5/29/12

Virginia Herold

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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